SECRET

13 June 1950

MEMORANDUM TO THE FILES:

SUBJECT: Contract - Setoff

1. A question was recently presented which may recur, and while the answer is more or less obvious from a common sense standpoint, specific precedent was somewhat obscure. The amount determined to be payable under a procurement contract was reduced under the price revision clause and it was proposed to either require reimbursement by the contractor for the amount of the reduction, or to offset any overpayment against progress payments under another contract from the same contractor. Direct reimbursement in reply to a demand from the Agency is, of course, perfectly proper. However, there was some doubt about the appropriate mechanical procedure involved in setting off deficits against progress payments under another agreement.

2. Normally the General Accounting Office possesses the sole authority for asserting claims in favor of the United States (see R.S. § 236, 31 USC 71) and there is no doubt that a final account with an outstanding deficit in favor of the Government could be turned over to GAO for collection. In the instant situation, the propriety of setoffs against another contract appears to be clearly justified in view of the Comptroller's decision (unpublished, No. B-88537 of 28 September 1949), in which setoffs by one Government agency against obligations running to a separate agency was permitted by GAO.

3. This is clearly the most logical approach and forestalls the impractical approach of forwarding an outstanding account to GAO for collection without regard for debts to the contractor which would then be extinguished by payment.

4. The question of action by the Agency rather than GAO is, of course, obviated where UNV. funds are used, and the final auditing would be made within the Agency rather than in the General Accounting Office.

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